IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.7.2006

C O R A M :

THE HONOURABLE MR.A.P.SHAH, THE CHIEF JUSTICE
AND
THE HONOURABLE MR.JUSTICE D.MURUGESAN

W.A.No.475 OF 2006

R.Muthu ... Appellant

-vs-

1. State of Tamil Nadu, rep.by its
Secretary to Government,
Social Welfare Department,
Fort St.George,
Chennai-600 009.

2. The Director,
Family Welfare,
NO.359, Anna Salai,
Chennai-600 006.

3. The Dean,
Government Rajaji Hospital,
Madurai-600 020.

4. Family Planning Association of
India, rep.by Deputy Director,
FPAI Road, Ellis Nagar,
Madurai-625 010.

5. National Insurance Co.,Ltd.,
rep.by its General Manager,
NO.190, Anna Salai,
Chennai-600 006. ... Respondents

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PRAYER : Appeal under Clause 15 of the Letters Patent against the order dated 13.6.2005 passed in W.P.No.13158 of 2005 on the file of this Court.

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For appellant :: Mr.J.Saravana Vel

For respondents :: Mr.Rajakalifulla,
Government Pleader

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J U D G M E N T

(JUDGMENT OF THE COURT WAS DELIVERED BY THE HONOURABLE THE CHIEF JUSTICE)

The wife of the appellant, by name Chitra, underwent sterilisation operation at the Family Planning Centre i.e, the 4th respondent on 29.1.2001 and she was discharged on 30.1.2001. Unfortunately, due to improper operation, she died on 01.2.2001.

2. It appears that respondents 1 and 2 have formulated a Scheme in association with the fifth respondent, whereby, in cases of death due to sterilisation, if death occurs in the hospital or within 30 days due to consequences of the sterilisation after being re-admitted, then the fifth respondent is liable to pay Rs.2 lakhs and respondents 1 and 2 are liable to pay Rs.25,000/- as ex-gratia compensation. The Scheme came into force with effect from 01.2.2001. The appellant filed the writ petition with the grievance that by the order impugned in the writ petition, only a sum of Rs.25,000/- was granted towards ex-gratia, while rejecting the claim of Rs.2 lakhs towards compensation, to which according to the appellant he is entitled. The learned single Judge dismissed the writ petition principally on the ground that as per the Government Order in G.O.(Ms.) No.30, Health and Family Welfare (R1) Department, dated 01.2.2001, any person who undergoes sterilisation operation after 01.2.2001, but dies within 30 days after such operation in her house, is entitled to only Rs.25,000/-, whereas, any person who has undergone such operation and dies within 30 days after such operation in hospital on her re-admission, is entitled to Rs.2 lakhs and since the petitioner's wife underwent operation on 29.1.2001, i.e. before the said G.O. came into force, the petitioner is entitled to only Rs.25,000/- and not Rs.2 lakhs.

3. We have heard the learned counsel appearing for the appellant and the learned Government Pleader appearing for the respondents.

4. The facts are not in dispute. The appellant's wife Chitra, aged about 25 years, underwent sterilisation operation at the Centre of the fourth respondent. The fourth respondent is a recognized Centre for the conduct of the sterilisation operation by respondents 1 to 3. The appellant's wife was admitted on 29.1.2001 and she was operated on the same day and on the next day, i.e. on 30.1.2001 she was discharged. It appears that on the same evening, she became unconscious and was rushed to the hospital. However, her condition deteriorated and she died on 01.2.2001. The 2nd respondent addressed a letter to the appellant on 07.09.2001 stating that they are granting ex gratia of Rs.25,000/- given by the government in the form of National Savings Certificates. The appellant refused to receive the said amount stating that he is entitled to receive Rs.2 lakhs in addition to Rs.25,000/- ex gratia. He made several representations to

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all concerned on several dates. Ultimately, the 2nd respondent by letter dated 13.02.2003 rejected the request for grant of compensation on the ground that the scheme of payment of Rs.2 lakhs as compensation came into effect from 01.02.2001 and since the appellant's wife underwent operation on 21.02.2001 the scheme is not applicable in her case and the appellant is entitled only to the government ex gratia amount of Rs.25,000/- only.

5. The G.O.(Ms.) No.30, Health and Family Welfare (R1) Department, issued on 01.2.2001 inter alia reads as follows:-

> ''Family Welfare Programme is being implemented in the State, through Government Hospitals, Post Partum Centres, Primary Health Centres, Voluntary Organisations, Local Bodies and Approved Private Nursing Homes. Every year, an average of 3.5 lakhs Sterilisation Operation are being done in this State. A target of 4 lakhs has now been fixed per year.
>
> 2. In cases of death due to sterilisation, the District Quality Assurance Committee under the Chairmanship of District Collectors, examines the death cases, as to whether the death has occurred due to sterilisation or not, and a sum of Rs.25,000/- is being paid as compensation to the family of the deceased mother who underwent sterilisation. In some cases, the family members are not satisfied with this compensation amount and they approach for claiming higher compensation.
>
> 3. Recently the Supreme Court of India in its judgment ordered that, in cases of failure of Sterilisation Operation, the compensation amount ordered by the Court, should be borne by the State Government and the concerned Medical Officers. Because of this Supreme Court orders, the doctors are not willing to do Family Planning Operations, as they are put into mental agony. In order to protect the doctors from mental agony, distress and to avoid the family of the deceased mother to approach the court for higher compensation, a Group Insurance Scheme has been designed by the Director of Family Welfare with the National Insurance Company Limited.
>
> 4. The salient features of the above scheme are as follows:-
>
> i. The Government of India have sanctioned a sum of Rs.25,000/- for each case of death occurring due to sterilisation. The Insurance Scheme is to provide Additional compensation for the welfare of the children of the deceased Family Welfare

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acceptors.

ii. The Insurance Company would pay a compensation of Rs.2 lakhs (in addition to Rs.25,000/- sanctioned by the Government of India) to the family of the deceased Family Welfare acceptors who dies due to sterilisation within the Government Hospital/Voluntary Organisation/ Local Bodies/Approved Nursing Homes from the date of admission to the date of discharge.

iii. The amount of Rs.2.25 lakhs (Rupees 2 lakhs + 25,000/-) will be deposited in the Nationalised Bank in the name of the children of the deceased mother equally.

iv. If the mother has one child, the amount will go to that child.

v. The spouse has no right to claim the amount.

vi. If any litigation arises, the compensation amount in excess shall be paid by the Government.

vii. The Bank will pay annually 10% of the amount for a period of 10 years to the children of the deceased Family Welfare acceptors for meeting their expenditure for Survival/ Education.

viii. In case of minor, the amount to be paid every year shall be given to the father/Guardian.

ix. In case of any one of the child dies before attaining the age of 18, the balance amount will go to the other children. The matured amount shall be paid to the children equally.

x. The average age for women to undergo sterilisation is 18 to 45 years.

xi. The average period of stay in the Hospital after sterilisation is 48 to 72 hours.

xii. If the death occurs outside the Hospital, within 30 days after discharge, those mother are eligible for Rs.25,000/- subject to the condition that the death is due to Medical reasons. .

5. ... ...

6. ... ...

7. ... ...

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8. The Government after careful consideration have decided to accept the proposal of the Director of Family Welfare. The Government accordingly direct as follows:-

1) To introduce a Group Insurance Scheme for mothers who undergo Sterilisation in the Government Hospitals/Local Bodies/ Voluntary Organisations and Approved Nursing Homes on experimental basis for a period of one year

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from 01.2.2001 onwards.

2) To utilise the Tamil Nadu Family Welfare Miscellaneous Purpose Fund to pay the initial down payment as premium (Approximately Rs.28 lakhs) to National Insurance Company Limited.
3) To withdraw the remuneration of Rs.15/- (being paid to Doctors/Para Medical/ Ministerial Staffs of Government Hospitals/ Local Bodies/Voluntary Organisation from the State Share of current compensation to withdraw the amount of Rs.15/- (now paid to Family Welfare acceptors from State Share for undergoing sterilisation in approved Nursing Homes.
4) Out of Rs.15/- an amount of Rs.14/- should be paid to National Insurance Company as premium, in respect of each sterilisation.
5) Director of Family Welfare is requested to review the scheme well in advance and to send the review report to Government so as to either continue or discontinue the scheme after 31.1.2002.

9. This order issues with concurrence of Finance Department vide its U.O.No.3433/FS/P/2000, dated 22.11.2000."

6. There is no dispute that the death of the appellant's wife occurred on 01.2.2001, on which date the Scheme for compensation came into force. The claim for compensation has been, however, denied by the 2nd respondent solely on the ground that she was operated upon prior to the issuance of the G.O. and therefore, she is not covered by the G.O. In our opinion, it is impossible to sustain the order of the 2nd respondent. It is well settled that a prospective benefit granted under a statutory provision is in certain cases to be measured by or depends on antecedent facts does not make the provision retrospective. In R. -vs- Mary Whitechapel (St.) (Inhabitants) (1848) 12 QB 120), the question related to the construction of Section 2 of the Poor Removal Act, 1846, which provided that ''no woman residing in any parish with her husband at the time of his death shall be removed from such parish, for twelve calendar months next after his death, if she so long continues a widow". In that case, the authorities sought to remove a widow within twelve months from the date of the death of her husband who had died prior to the Act came into force; and it was argued that to apply the Act to such a case was to construe it retrospectively. In rejecting the contention, Lord Denman, C.J. observed as follows:-

''It was said that the operation of the statute was confined to persons who had become widows after the Act

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was passed, and that the presumption against a retrospective statute being intended supported this construction; but we have shown before that the statute is in its direct operation prospective, as it relates to future removals only, and that it is not properly called a retrospective statute because a part of the requisites for its action is drawn from time antecedent to its passing". In this case, the words 'shall be removed' were thus found appropriate to cover all cases of future removals irrespective of whether the husband had died prior to the Act but they were not found wide enough to nullify completed removals prior to the Act, even if the widow was removed within twelve months of her husband's death."

7. In R. -vs- Birwistle, etc. Justices (1889) 58 LJMC 158, which arose under the Married Woman (Maintenance in Case of Desertion) Act, 1886, the Act was held to apply, without express words, to desertions which took place prior to the Act. It was held that the Act was intended to cure an existing evil and to afford to married women a remedy for desertion, whether such desertion took place before the passing of the Act or not. A reference may also be made to the decision of the Supreme Court in Boucher Pierre Andre -vs- Superintendent, Central Jail, Tihar, New Delhi (AIR 1975 SC 164), wherein the Supreme Court held that the benefit to set off pre-conviction detention period against the term of imprisonment conferred by section 428 of the Criminal Procedure Code, 1974 'where an accused person, has, on conviction been sentenced to imprisonment for a term' is also available where the sentence was imposed before the commencement of the Code to reduce the unserved portion of the sentence and that in so construing the section, it was not given any retrospective effect for it did not affect the sentence already undergone but affected only that part of the sentence which remained to be served in future.

8. The object of the G.O. is to confer the benefit of a fixed compensation in case of death due to sterilisation operation. Though the G.O. in clause (1) of para 8 used the words ''to introduce a Group Insurance Scheme for mothers who undergo Sterilisation in the Government hospitals/Local Bodies/Voluntary Organisations and Approved Nursing Homes on experimental basis for a period of one year from 01.2.2001 onwards", these words are completely neutral and do not indicate that the intention was to deny the benefit where the death has occurred after the issuance of the G.O. but the sterilisation operation had taken place before the G.O. Merely because the benefit is based on some antecedent facts does not make the provision retrospective. Therefore, in our opinion, the case of the appellant is clearly covered by G.O.(Ms.) No.30, Health and Family Welfare (R1) Department, dated 01.2.2001.

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9. In the result, the appeal is allowed. The respondents are directed to pay the amount of compensation of Rs.2 lakhs in terms of the G.O. within a period of eight weeks from today. The ex-gratia amount of Rs.25,000/- shall also be released, if not already released. No costs.

js/sm

Sd/-
Assistant Registrar

/true copy/

Sub Assistant Registrar

To

1. Secretary to Government,
   Social Welfare Department,
   Fort St.George,
   Chennai-600 009.

2. The Director,
   Family Welfare,
   NO.359, Anna Salai,
   Chennai-600 006.

3. The Dean,
   Government Rajaji Hospital,
   Madurai-600 020.

4. The Deputy Director,
   Family Planning Association of India,
   FPAI Road, Ellis Nagar,
   Madurai-625 010.

5. The General Manager,
   National Insurance Co.,Ltd.,
   NO.190, Anna Salai,
   Chennai-600 006.

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1 CC TO G.P., HIGH COURT, MADRAS (SR 29072)

1 CC TO MR.P.V. BAKTHAVATCHALAM, ADVOCATE (SR 29077)

W.A.NO.475 OF 2006

MKJ(CO)

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